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ABSTRACT

When exploring the relationship between states and the federal government, analysts have examined the strategic value of a differential approach as well as the political issues involved. This paper explores those themes in examining state differential treatment of districts under four major headings: (1) the tensions between uniformity and differential treatment in the evolution of the state role in education policy; (2) the various forms of differential treatment; (3) new pressures leading to the use of differential treatment strategies; and (4) the effectiveness of differential treatment. The fifth, concluding section addresses implications for policy and research. It is implied that differential treatment strategies should be tailored to the purposes they are intended to serve. Encouraging school improvement and alleviating regulatory burden may require different approaches to varied treatment, for example. In addition, continued work on educational indicators and attention to state agency resources are suggested. To understand the potential of differential treatment, it is necessary to study differential treatment at the state and local level; the personnel requirements and other costs these strategies embody; and the effects of such strategies on schools, districts, and states and the relationships among them. (SI)

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Diversity Amidst Standardization

State Differential Treatment of Districts

Susan H. Fuhrman
with assistance from
Patti Fry

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December 1989

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SUMMARY

This paper draws on a review of literature and on telephone interviews of state agency personnel in 25 states to examine how states treat districts differently from one another.

Seven forms of differential treatment can be identified. Three are traditional: (1) formula or project grant efforts that benefit some districts more than others; (2) technical assistance and oversight efforts that reach some districts more than others; and (3) administrative waivers from compliance requirements. Four approaches to differential treatment are newer and are related to the evolving state focus on performance. These are: (1) performance-based accreditation; (2) rewards and sanctions related to various levels of performance; (3) targeted assistance to low-performing districts; and (4) flexibility to support innovation.

As state policy focuses more centrally on improving schooling and on measuring outcomes, the inclination to differentiate based on those outcomes will increase. That tendency is seen in the support for the concept coming from key leaders. Another factor contributing to increasing use of differential treatment is a squeeze on state agency resources, leading departments to target their efforts by focusing on certain districts. Finally, differential treatment based on performance addresses a dilemma long plaguing regulatory relationships in education: the unreasonableness that occurs when all districts are treated the same.

However, issues regarding the purposes and potential benefits of differential treatment have generally not been well thought through. Among the issues are the following: the selection of indicators for purposes of discriminating among districts; the links between emerging forms of differential treatment and school improvement; the capacity of the state to apply differential treatment strategies; the willingness of districts and schools to participate in differential treatment plans; and unanticipated interactions among differential treatment strategies.

This analysis implies that differential treatment strategies should be tailored to the purposes they are intended to serve. Encouraging school improvement and alleviating regulatory burden may require different approaches to varied treatment, for example. In addition, continued work on educational indicators and attention to state agency resources are suggested. To understand the potential of differential treatment, we need to embark on studies of differential treatment in practice. The studies should address the support for differential treatment at the state and local level; the personnel requirements and other costs these strategies embody; and the effects of such strategies on schools, districts and states and the relationships among them.

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Patti Fry, a research assistant at CPRE and Rutgers graduate student in political science, conducted much of the research done specifically for this paper, primarily telephone interviews with state agency personnel in 25 states. The interviews focused on the process and purposes of state waivers of regulation, patterns in waiver use, and other approaches to differential treatment. The interview protocol and a list of respondent states are appended to this paper.

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INTRODUCTION

In the aftermath of sweeping efforts to standardize education through the reforms of the 1980s, state policymakers are now facing a perplexing quandary as they attempt to move beyond minimums to seek quality. Research tells them that the school is the site of improvement and the state can only facilitate, not mandate, excellence. Business interests urge devolving authority to the school, the equivalent of the production unit. Parents and organized teachers join in the cry for more school-based decision making; the latter particularly rail against the spate of new state tests and accountability-related paperwork, claiming it diverts them from their central mission rather than enhancing it.

Desiring both improvement and accountability, familiar with a standard-setting role and unsure of other approaches to state education policy, state policymakers are searching for alternative strategies to influence schooling. Their understandable confusion is captured by the question of a state legislator at a meeting on school restructuring: "Now, how are we supposed to regulate this deregulation?"

One piece of the answer to the legislator's dilemma may lie in treating different districts differently, reserving a heavy hand for some, providing more flexibility and regulatory freedom for others. Variable treatment is to some extent inevitable, a natural consequence of the extensive variation among districts.

The number of local districts has decreased from over 117,000 before World War II to approximately 16,000 today, as a result of state-encouraged school district consolidation. But most states still have hundreds of operating school districts. Two states, California and Texas, have over a thousand districts; 10 have between 500 and 1000; only 13 have under 100 districts (NEA, 1988). Districts can range enormously in size, wealth, need, performance and capacity. For example, Pennsylvania's 500 districts range in size from 272 students to almost 200,000 students, in number of schools from 1 to 265, and in per pupil expenditure from $2,000 to $6,000 (PDE, 1988, 1985). Mississippi's 154 districts show a much smaller expenditure range as most of their funding comes from the state. There is, however, wide variation on other factors, such as percent dropping out (ranging from 1% to 78%) and percent receiving free lunch (ranging from 33% to 99%) (NAACP, 1988). States expect, accept and sometimes compensate for the diversity in both policy and enforcement mechanisms. However, differential treatment as a deliberate strategy of state policy is now taking on new dimensions and gaining political momentum.

When exploring the relationship between states and the federal government, analysts have examined the strategic value of a differential approach as well as the political issues involved (Elmore, 1982; Murphy, 1982). This paper explores those themes in examining state differential treatment of districts under four major headings: (1) the tensions between uniformity and differential treatment in the evolution of the state role in education policy; (2) the various forms of

differential treatment; (3) new pressures leading to the use of differential treatment strategies; and (4) the effectiveness of differential treatment. The fifth, concluding section addresses implications for policy and research.

THE STATE ROLE IN EDUCATION POLICY: TENSION BETWEEN UNIFORMITY AND DIFFERENTIAL TREATMENT

Differential treatment as a state strategy needs to be understood in the context of state education policy more generally. The state role in education has evolved in strength, reach and focus, with the tension between uniform treatment and explicit acknowledgement of diversity a constant theme.

A primary focus of state policy has been the establishment of standards for local provision of education. Standards concerning minimal levels of resources, qualifications of personnel, and health and safety predated standards concerning course and program provision and other processes, such as governance and planning. Very recently, notably in the reform movement of the 1980s, states have moved into the area of performance. For example, they have mandated more measurement of outcomes and held districts accountable for achievement on such measures through techniques like public reporting.

Standards are aimed at achieving a measure of uniformity across districts, but in the realization that districts vary in their ability to meet minimums, states developed policies that compensate or adjust for differences. Thus, beginning in the 1920s and reaching a peak in the school finance reform movement of the 1970s, policymakers formulated education funding schemes aimed at expenditure or tax yield equalization. Even though state legislators and governors have been more comfortable with distributive policies that spread the wealth among constituents (McDonnell & McLaughlin, 1982; Milne & Moscowitz, 1983), in the late 1960s and the 1970s states also developed extensive programs for special need students, to provide extra resources for districts serving such populations and to assure minimal levels of program provision.

Policies that acknowledged diversity in resources and needs were prime elements in the growth of the state role, as assisting less capable or more needy districts through greater aid or technical support resulted in a larger state share of education spending, more state program development, and more regulations to assure proper targeting of funds. Underlying the expansion of the state role was growth in state capacity to make policy, through strengthened institutional structures and fiscal bases (Fuhrman, 1987; Fuhrman & Elmore, 1990), and in the incentives to state elected officials to assume policy leadership (Rosenthal, 1981). Analysts have also argued that the increased state role in the 1980s reflects the deliberate withdrawal of the federal government from policy development (Clark & Astuto, 1986). However, the relationship between the growth of the state role and policies to provide differential resources and programs is a strong one. School finance reform propelled the state share toward half of all educational funding, escalating demands for accountability for the state dollar. The accountability movement was then fueled in the early 1980s by concern about the competitive position of the United States and a perceived crisis in school performance that suggested that schools had been entirely too unaccountable in the past. In response, state policymakers focused their efforts more directly on school performance, extending their reach to core aspects of schooling through more

extensive curriculum regulation, teacher evaluation, staff development policies and the like.

The evolution of the state role is evident in the ways states have assured adherence to their policies. Traditionally, states inspected, through district self-reports and periodic visits, compliance to input and process standards (Richards, 1988). For example, state agencies can monitor pupil/teacher ratios through local forms specifying personnel assignments and student enrollments and crosswalk those with state certification data to monitor assignment of teachers by field. Minimal curricular requirements are monitored through inspection of syllabuses and other paper work, such as school board minutes indicating adoption of specific curricula. More recently, the focus on performance has led to monitoring of outcome data, such as test scores and dropout rates.

The shift toward a performance concern is fundamental to the evolution of differential treatment as a state strategy. The focus of policy on performance is itself, as shown above, in large measure a consequence of differential treatment, in the sense that compensating for differences in district wealth and need meant more state aid and more demands for accountability. The legitimacy accorded to state policies related to school performance is also one of several factors lending new dimensions and new impetus to the strategy of differential treatment. The next section of this paper catalogs the basic types of differential treatment available to states and demonstrates that emerging approaches to variation are tied to performance.

FORMS OF DIFFERENTIAL TREATMENT

Seven forms of differential treatment can be identified. Three are traditional: (1) formula or project grant efforts that benefit some districts more than others; (2) technical assistance and oversight efforts that reach some districts more than others; and (3) administrative waivers from compliance requirements. Four approaches to differential treatment are newer and are related to the focus on performance. These are: (1) performance-based accreditation; (2) rewards and sanctions related to various levels of performance; (3) targeted assistance to low-performing districts; and (4) flexibility to support innovation.

Traditional Approaches to Differential Treatment

The first traditional type of differential treatment includes formula or project grant efforts that benefit some districts more than others. Prominent examples of programs that redistribute benefits to least wealthy or most needy districts are equalizing school finance formulas and compensatory education programs.[1] State compensatory programs often originate more as side-payments to politically powerful urban interests than as manifestations of concern for student beneficiaries. However, the fact that 27 states have some sort of compensatory school aid that flows mostly to districts with large numbers of disadvantaged and/or low-achieving students (Verstegen, 1988) indicates that redistributive policies are a relatively common form of differential treatment at the state level (Elmore, 1982).

States also support projects in subsets of districts through special grants, typically in response to district proposals. Projects might support relatively open-ended innovations or be strictly targeted to serve certain populations, such as teenage parents, and be fairly restrictive about permissible services and approaches. Some programs are pilots, intended to develop demonstration and evaluation models prior to eventual statewide implementation. However, a number of programs termed pilots never evolve into statewide efforts; they are avenues for states to address a problem, such as dropout prevention, at a cost that is limited by the small number of participating districts. Generally, districts with sophistication in proposal writing are at an advantage in competitions for such projects, but many programs include eligibility criteria related to student need.

The second type of differential treatment traditionally practiced is the direction of state agency technical assistance and attention to some districts more

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[1] Readers are likely to be familiar with the classification of policy proposed by Theodore Lowi (1964; 1972). Policies are placed into one of four categories--redistributive, distributive, regulatory and constituent--depending on the likelihood of coercion (remote or immediate) and the focus of coercion (group or individual).

than others. Large districts, particularly urban ones, often have their own substantial bureaucracies and elaborate structures that replicate state agency bureaus of curriculum, staff development, testing, research and evaluation, etc. Common wisdom holds that these districts feel little need for state assistance. Policymakers in such districts often ignore state agency efforts to help, fail to attend state-sponsored workshops and symposia and claim that their own policies either anticipate or are more stringent than state policies. They assert that state policies are at best irrelevant and at times intrusive, but rarely are challenging enough to require assistance.

The same common wisdom posits that very small districts, most likely to be rural, are most desirous of state assistance because they lack the central office capacity that larger districts have. In fact, it is often the more affluent suburban districts and mid-size cities, large enough to have their own sizeable staffs, who also have the resources to send personnel to state workshops and the sophistication to apply for special grants for innovation or pilot programs, who make the most use of state agency resources.

Similarly, some districts receive more oversight from the state than others. New strategies for monitoring and compliance that explicitly acknowledge district variation will be discussed shortly as a newer form of differential treatment. However, even the majority of states whose district accreditation/certification process is not currently designed to distinguish between levels of performance have to pay more attention to those districts that fail to comply with state, or federal policy. Districts receiving non-standard certification or accreditation are asked for further documentation, receive follow-up visits, are assigned state assistance teams, etc. If the problems concern serious fiscal mismanagement, receivership might be invoked.

Furthermore, states cannot ignore a district with visible problems, such as poor test scores or high dropout rates, especially if the problems are well-publicized. For example, the New York State Department of Education asserts that it tripled its staff dealing with the New York City schools in the last year as reports of poor performance, corruption on local boards, decaying buildings and other serious problems received substantial media attention. The Board of Regents recently announced a series of mandated improvement programs and the commencement of audits of the New York central Board of Education and of local school boards (Verhovek, 1989).

The third example of traditional differential treatment is the use of waivers or exemptions from regulation to recognize varying district circumstances. Interviews with state agency personnel in 25 states indicates that typically, agencies and boards can grant waivers of regulation at their own discretion. They can also waive statutory requirements, upon district request, when legislation specifically permits it. Whether the chief state school officer or the state board is ultimately responsible for waiver decisions varies from state to state and sometimes depends on the specific category into which the request falls. For example, in some states the chief may decide unless statute specifically designates the board.

An interesting trend is that as legislative interest in education increases, more of what was done through board action gets incorporated in statute and the

ability to grant variances or flexibility declines, unless the legislature is sensitized to the need to include waiver language. As a New Mexico official said, "Before the Public School Reform Act of 1984, the department had wide authority to grant waivers. Now that many of our policies have been placed in statutes, that authority has lessened."

The traditional view of waivers is that they are intended to grant flexibility to districts having temporary trouble in complying with regulation or statute. Waiver requests commonly concern class size (exemptions from maximum limits); teacher certification requirements (permission to temporarily assign teachers to a subject or grade level other than the one in which they hold certificates); requirements concerning administrator assignment to schools (exemptions from ratio requirements related to the number of administrators per building, teachers or students); length of school year (exemptions related to the minimum number of student contact days); and facilities usage (exemptions from requirements about minimum classroom size, for example).

Such waivers are typically granted for a one-year period and are not intended to provide substantive flexibility but merely to grant more time for adjustment or to recognize unique conditions. While agency personnel in some states did not note a pattern in these traditional kinds of requests, others related them to district size or changing conditions. For example, respondents reported that requests for waivers of requirements concerning class size come mostly from rapidly growing districts in New Mexico; in New York, rural schools are more likely to request variances to permit small schools to share administrators. Similarly, the most requests for waivers from teacher certification requirements in Minnesota come from rural districts. The most frequent requests in California concern changing a date for the observance of a school holiday (325 requests in 1983-84; 668 requests in 1984-85; 448 requests in 1985-1986) and exhibit no patterns in the type of district making the request. In Florida, the origin of requests depends to some extent on the season. A respondent in that state told us, "The only pattern I can think of is that the hurricane season hits the south of Florida in the fall, and so that is when they request emergency day or term waivers. In the north of Florida, tornado season is in the spring, and so that's when those requests come in."

The general posture toward requests for temporary variances is to grant them when conditions warrant but to be careful to avoid abuse. For example, a respondent in a Southern state education agency noted that:

> There are a lot of districts who would like more fiscal flexibility and these are problems. There are many small districts without a strong financial base and they would like waivers for survival. For example, they would like to give teachers more preparation periods, let them teach 200 kids a day instead of 150, etc. This is a real problem. The Board is willing to waive to enhance curriculum, but not to let people squeeze out extras on too small a base when they probably shouldn't be surviving.
>
> There are also districts where either the taxpayers won't provide the necessary funds or they are desperately trying to hold on to their tiny schools, and the state would say no those. Some of these types would like the legislature to reduce the required number of high school units. Well how

low can you go? Do you want kids to go through high school on a Dewey correspondence course? In actuality, not many requests of this type come through because they are so clearly discouraged.

Concern about preventing abuse is evidenced by the fact that respondents in several states, including Alabama, Florida, Kentucky, Maine, New Mexico, Ohio, Texas and Wyoming, reported that the agency exercises more frequent or more intensive oversight in districts that have waivers. For example, in New Mexico, "Our monitoring is on a three-year accreditation cycle; however, we go back into schools that have waivers every year for a follow-up."

Some states attempt to anticipate varied response to regulation by making regulations more flexible and forestalling the need for waivers. The Connecticut Department of Education receives few requests, primarily because the regulations are very general. For example, the state does not regulate class size.

In California, if there is an area that typically generates violations, the department and board develop guidelines outlining acceptable variations, negating the need for waivers. An example is a long-standing statute concerning teacher/administrator ratios that did not recognize as teachers those undertaking curriculum, staff development or mentoring assignments. All personnel not currently teaching were classified as administrators. Recent interest in enforcing the statute from the state comptroller led to district concern. Therefore, the California Department of Education developed new guidelines about the activities in which a teacher could be engaged and still be considered a teacher.

The state education department in Minnesota used to get numerous requests for waivers from elementary class size provisions. Consequently, the board changed its rule to permit a local board to pass its own class size policy in substitution for the state standard.

Emerging Approaches to Differential Treatment

The newer approaches to differential treatment embody the performance focus mentioned earlier. State policymakers are developing policies to include performance measures in district accreditation/certification processes and programs that apply rewards or sanctions based on performance. Some state agencies are also targeting technical assistance to low-performing districts. States are also exploring the use of waivers and regulatory flexibility to support innovation. This last approach can be explicitly tied to performance by provisions that accord less frequent oversight and more flexibility to higher-performing districts.

Regulatory flexibility is also tied implicitly to performance in that many state policymakers view it as part of a bargain they are seeking to strike with local districts: more flexibility with regard to educational processes in return for more accountability on outcomes. For the sake of conceptual clarity, the newer forms of differential treatment are discussed as distinct strategies. However, in practice they may be melded so that, for example, a performance-based accreditation system includes rewards/sanctions, targeted technical assistance and regulatory variation.

Performance-based accreditation is one approach to linking outcome measures to differential treatment. Outcome measures are added to compliance measures as criteria for accreditation; categories of accreditation or certification status are expanded to discriminate more discretely among districts. Districts earning low ratings are scheduled for more intensive oversight and assistance and those obtaining higher ratings receive less attention. For example, The Illinois State Board debated a revised regulatory process that "draws upon the extensive data on student achievement," and continues to monitor the presence or absence of certain courses, certified staff, etc., but no longer considers these "sufficient by themselves to be the basis for determining a school district's recognition status." (Illinois State Board of Education, 1987, p. 19). A new system, said the Board:

> should focus state activity on school districts with the greatest need by creating a spectrum of regulatory classifications of sufficient breadth to define the varying levels of state attention needed by individual schools or districts. For example, districts at the top end of such a range could be in a five-year cycle of recognition, while those at the other extreme with severe problems could be under virtually continuous state supervision. (p. 20)

Policymakers in Maryland, Nebraska, Missouri and Michigan are also interested in performance-based accreditation. New Jersey's monitoring process already includes performance measures as indicators.

A second approach, providing rewards and sanctions, can take several forms. According to the Council of Chief State School Officers, 37 states publish school and/or district outcome measures so that the public can apply rewards and sanctions (OERI, 1988). Some states also provide tangible non-monetary recognition, such as flags or pennants. At least 11 states have or are planning programs of monetary rewards for school improvement. Some, such as South Carolina and Pennsylvania, provide rewards based on improvement in measures such as test scores and attendance. Others, such as Florida, suggest specific indicators but leave the determination of the criteria up to districts, subject to state approval of improvement plans (Richards & Shujaa, 1990).

Sanctions now being proposed for poor performance reach beyond punishments states have generally applied for non-compliance. The ultimate punishment for non-compliance is loss of state aid, a step rarely taken (Fuhrman & Elmore, 1990). Intermediate steps, such as more oversight and withdrawal of funding for specific programs, have been fairly common. Recently, at least six states have developed programs for state intervention in severely troubled school districts, sometimes referred to as "academically bankrupt" districts (OERI, 1988).

In South Carolina's Impairment program, districts that do not meet minimum criteria on specified statewide tests, student and faculty attendance rates and exceed certain dropout rates are deemed "seriously impaired." The state board of education then mandates corrective action which the district must implement within a six-month period with assistance and oversight from the state department and perhaps a special grant as well. If a district is unsuccessful in the implementation period, the chief state school officer may continue implementation, declare an emergency and withhold funding, or replace the district superintendent

by appointment. To date, each impaired district has successfully completed its six-month implementation period.

In New Jersey and Kentucky, the potential sanctions also include state takeover and replacement of local officials. In these states, the process for identifying problem districts is either incorporated into or coordinated with the normal accreditation or certification procedure. Therefore, the process entails other criteria, such as compliance with improvement plans, in addition to performance. In each state, the takeover issue has generate legal challenges by target districts. At this writing, Kentucky has two districts in the intensive intervention stage that precedes final takeover. New Jersey has officially taken over one district, Jersey City, which is now headed by a state-appointed superintendent.

The targeting of technical assistance to low-performing districts is a third differential treatment strategy that is becoming more prevalent, even in states that do not have formal takeover and pre-takeover assistance processes. For example, Connecticut has a Priority School District Program in which districts with the greatest needs, as identified through test data, voluntarily participate in a program to improve student outcomes. They develop an improvement plan with the department and are eligible for additional funding. The districts are also assigned a broker teacher responsible for directing resources in the department to those districts. All program consultants make those districts priorities. For example, when the department runs conferences, it makes sure those districts attend.

Similarly, the Maine state agency is reorganizing to create a division of school assistance. Staffed by 12-15 people, 4 of them new, it will provide on-site aid and monetary support to those volunteer districts which self-assessment and department verification identify as requiring help. Criteria such as test scores, inability to meet state requirements and teacher turnover will be used.

A fourth emerging differential treatment strategy is the use of exemptions from regulation that are more substantive than traditional temporizing waivers. A number of state agency personnel indicated that waivers could be a vehicle for providing more flexibility to districts and encouraging innovation. Among the agency personnel in 25 states who were interviewed for this paper, respondents in 13 states said that the state either currently offers or has plans to offer variances that would permit more curricular, instructional or structural experimentation. However, the overwhelming sentiment was that such waivers are rarely requested. The following quotes are illustrative:

> We do have rules that allow districts to try innovative programs. We can provide a waiver if they have a local hearing, submit the proposal to the superintendent, get it approved by the board, identify each rule to be waived, propose a method of evaluation, and it can be granted for one year, although the district may apply for a continuation. We have never had a waiver requested for an innovative program. (South Dakota)

> The department has always been receptive to waivers and is actually trying to get districts to ask for a lot more, particularly related to site-based management, moving away from Carnegie units, moving toward outcome-based

accountability. However, not a lot of districts have applied. I think the reason is that so far, the state has not provided financial assistance to districts to do things differently and schools are still not really aware of the possibility of doing things really differently. A few years ago, the state had an RFP out to districts to develop a more outcome-based model, involving many components such as staff development. Sixteen districts participated and were urged to apply for waivers of all statutes in the department's authority to grant waivers. None asked--they did not find that the standards encroached. (Minnesota)

I can't remember a substantive waiver, someone wanting to do something that the code prevents them from doing. There is an incredibly specific code, but not much detail on program. Also local districts are fettered by their own lack of vision about doing things differently. Districts are encouraged to apply for more waivers, but don't. Whenever I speak to district people who complain about mandates, I say: "go to the code, find the obstruction, and I'll get you a waiver." People talk about restructuring, but they really don't have the why in mind, so they don't think about major changes. (California)

The use of waivers to support innovation is an explicit component of new state-level efforts to encourage school and/or district restructuring efforts. At least five states--Arkansas, Maine, Massachusetts, New Mexico and North Carolina--have such programs underway. Others, including California, Colorado, Nebraska and South Carolina, are either considering or beginning to implement such programs. Most of these programs provide grants for planning and implementing innovative projects aimed at decentralizing, broadening participation in decision making and redesigning components of schooling. Such components include the use of staff and the organization of instruction; for example, a number of the project sites have undertaken interdisciplinary teaming and flexible scheduling. The state generally furnishes technical assistance in the form of seminars and forums to provide alternate visions of restructured schools; the waiver provisions are designed to assure that state regulation does not impede change.

In Washington State's Schools for the Twenty-First Century Program, the state board may grant waivers in areas other than public health, safety or civil rights. If the project planners present satisfactory reasons, they may request waivers of regulation and statute related to: the length of the school year; teacher contact hour requirements; program hour offerings; student/teacher ratios; salary lid compliance requirements; and the commingling of state funds. The project may also request the state board to ask the U.S. Department of Education to modify or waive federal rules if necessary to fully implement a pilot project.

A state board of education report to the Washington state legislature (1989) indicates that only 7 of the 21 sites requested at least one waiver in the initial year of the program. Three of the sites requested waivers in each of three categories relating to time: program-hour offerings; teacher contact hours; and school year. The purpose of these waivers was to free up teacher time for planning and inservice, by reducing total program offerings, decreasing total student contact hours and decreasing total student contact days. An additional

site requested waivers in both the program hour offering and teacher contact hour category. One request dealt with high school credit definition, reducing the number of minutes per period to provide time for seminar classes on various topics. Generally, fewer waivers were requested than expected. According to the board's report:

> Once site staff began a detailed review of rules and regulations, they determined that there were few actual barriers to their plans. Not all of the requests for waivers made were in fact needed by the sites in order to accomplish their goals...Items dealing with contact time and other Basic Education requirements could have been requested under provisions already available to all districts and did not require this [Schools for the 21st Century] legislation. (p. 8)

As indicated previously, regulatory flexibility might also be tied to performance-based accreditation systems. The Illinois State Board recommends that districts with top recognition status request and receive "exemptions from selected elements of the regulatory requirements in order to engage in special, innovative or experimental programs and activities" (p. 20). An agency official in Mississippi similarly linked increased waiver use to performance-based accreditation:

> Internally the state plans to identify the worst and best--to move to a five-level accreditation system that recognizes quality as well as just compliance or non-compliance. It would probably use waivers as a method to give flexibility to the quality districts. The Board is discussing basically leaving such districts alone, giving them a lot of flexibility. Of course, it is very hard to specify what is "good" or "excellent." A fear is including people who look good on paper but really aren't. "Bad" is easy.

In summary, differential treatment of districts occurs through traditional forms of aid, assistance, oversight and administrative exemption. It also occurs through new programs that reward high performance, apply very serious sanctions to troubled districts, target assistance and oversight based on performance and exempt districts from regulation to encourage innovation. To date, few districts appear to be taking advantage of the expressed willingness of states to provide substantive exemptions, even in the states with restructuring projects. Hence that willingness has not yet been tested. Similarly, the bankruptcy provisions that involve takeover for poor performance, not just for fiscal difficulties, are too new to evaluate. Whether and how state intervention can lead to educational improvement is unknown and whether these programs can provide a deterrent effect to other districts also can not yet be determined. Despite the lack of experience regarding newer approaches to differential treatment, it is likely that states will turn more to these strategies in the future.

DIFFERENTIAL TREATMENT: NEW PRESSURES CONTRIBUTING TO INCREASING USE

The emerging incarnations of differential treatment are inextricably linked to the overall concern with performance evidenced by recent state policy. As state policy focuses more centrally on improving schooling and on measuring outcomes, the inclination to differentiate based on those outcomes will increase. That tendency is seen in the support for the concept coming from key leaders. Another factor contributing to increasing use of differential treatment is a squeeze on state agency resources, leading departments to target their efforts by focusing on certain districts. Finally, differential treatment based on performance addresses a dilemma long plaguing regulatory relationships in education: the unreasonableness that occurs when all districts are treated the same.

Support for differential treatment has been expressed by prominent political and business elites. For example, the nation's governors have proposed "an old-fashioned horse-trade," in which states would set standards and provide freedom from regulatory controls, particularly those related to educational processes. Schools and districts would be accountable for results through public report cards; states would reward success and take over districts that "don't make the grade" (NGA, 1986, p. 3). President Bush has spoken in similar terms, offering to grant certain districts relief from restrictions on the use of federal aid if they agree to be held accountable for results (Miller, 1989). Business leaders, who have played an increasingly pronounced role in education policy, have urged the application of private sector lessons regarding unit discretion and administrative simplicity to education. They have recommended the use of waivers and state support for bottom-up improvement efforts (CED, 1985). The willingness of state agency officials to use waivers to encourage innovation indicates that the policy leaders' message has attained fairly widespread support at the operational level.

Trends at the operational level also lend momentum to differential treatment. State education agencies simply do not have the capacity to pay equal attention to all districts. State agencies have taken on significant new reform-related responsibilities, such as developing, administering and interpreting new tests for teachers and students and developing new curriculum frameworks. However, agency resources do not appear to have kept pace with these challenges. No new studies of the size and organization of state education departments have been conducted, but research on reform policymaking and implementation suggests that legislatures and governors were anxious to place new money into local aid and teacher salary support rather than into agency budgets (Fuhrman, Clune & Elmore 1988; Fuhrman & Elmore, 1990). Personnel in 14 of the states surveyed for this paper indicated that department resources were stretched, either because staffing had not increased in concert with responsibilities or because the department had suffered an actual cut in resources despite the allotment of new duties. As respondents expressed it:

> In the six years I have been in this job, the SDE staff has shrunk by 200 PYs on a base of 1200 in the department. The 1200 is about half accountant types and 400 educational professionals (administrators and consultants), some

of whom do assistance and some compliance. That is not a lot for a state with 4.5 million kids. (California)

In 1982, when the reform act passed, the department had the same number of staff it has now, although now it has greatly added responsibilities--such as a statewide curriculum, new testing program and the movement toward performance-based accreditation. It also has absorbed three small agencies in the interim and still maintained the same size. (Mississippi)

We have some new responsibilities as a result of reform. We had the Kansas Plan, under which we are to help with redirection. Some new things to come out of that are pre-certification testing of teachers, more state funding for inservice programs for teachers and an internship program for teachers, which is still being developed. We're also looking at accountability. Staffing has decreased over the past few years. (Kansas)

We now have a career ladder system that we administer. There is also a merit pay system which is evaluated by the department and computer education is now required in the junior high schools. We have four priorities for the second wave: at-risk students, adult literacy, community involvement and the enhancement of the teaching profession. Our staffing pattern has been reduced by 17 percent since reorganization and top-level management has been reduced also. (Tennessee)

Our responsibilities have changed radically over the last five years. For example, we now have a statewide testing program we are responsible for, and a "super" schools program where we give monetary rewards to innovative districts. So we have more demands put upon us at a time the legislature is cutting the department. (Wyoming)

Most of the programs that have been implemented in other states as a result of reform were already in place here. We do have a lot more programs though. We have additional technical assistance available, we run a clearing house for missing children, a teen pregnancy program, we have an AIDs consultant, and a consultant for Parent Education. But most of these programs have been absorbed into the department. We take on more with a similar level of staffing. So, we have one of the smaller staffs in the country and the fifth largest student base. So we're all working hard and the staff is stretched. (Ohio)

A consequence of stretched capacity is more targeting of agency resources. Differential treatment is viewed as one solution to the problem of inadequate resources at the agency level:

We visit each district once every three years. It is virtually impossible to provide any follow-up with 1,050 districts. We have asked the legislature to change this to a five-year cycle, or to increase the staff and funding. We have districts with a history of good performance and some with a history of bad performance. We need to spend more time with districts with lower student performance. (Texas)

> In the mid-1980s an educational accountability bill was passed, which included academic deficiencies. So we now have four phases for targeting resources. Phase I is for districts that are in minimal non-compliance with standards. We have indicators such as attendance and drop out rates, as well as financial indicators, and if a district really falls below standards in these, they are a Phase II district. There is a targeting of resources at this stage. There are some discretionary funds, such as grant monies, which can be funnelled to districts, but mostly our help consists of technical assistance. If after technical assistance has been given to a district and it is still below standards or has not made satisfactory progress towards improvement, it becomes a Phase III district. We have two districts currently in this phase. At this point there is direct intervention into the district and we take over in whatever area it is deficient, such as personnel, employment or curriculum. If after this stage there are still problems, we have a Phase IV in which there is a cause of action to remove the district officials. We have never had to use the last phase...We need more resources to help the Phase II and III districts. (Kentucky)

The most significant factor providing impetus to performance-based differential treatment is its potential in solving a recurrent regulatory dilemma. A major impediment to differential treatment in the past has been the lack of objective indicators to identify troubled districts that might require more attention and those districts whose success might warrant a lighter hand and less attention. Fearful of erring by relying on subjective measures, regulators have aimed at treating everyone the same. And, because regulation is designed to standardize, because it often aims at bringing the most recalcitrant or laggard up to minimal levels of practice, the tendency is to treat everyone as what Bardach and Kagan (1982) call "bad apples."

The lack of agreed-upon outcome measures has resulted in extensive reliance on process in judging or accrediting districts. Compliance reviews have involved examination of local documentation of mandated processes, such as planning procedures, that are supposed to lead to good performance. In turn, this results in burdensome, extensive paperwork on the part of the regulatee and excessive formalism and legalism on the part of the regulator, a condition characterized as "regulatory unreasonableness." Unreasonableness stems from the lack of fit between what regulation is intended to achieve, in this case good schooling or at least minimum levels of schooling, and what can be seen or measured. In the past, what inspectors could inspect was process, or more accurately, paper trails of process; there were no guarantees that compliance would yield true educational benefits and the costs of compliance, in the form of paperwork, were severe (Bardach & Kagan, 1982; Bardach, 1986; Kagan, 1986).

Now, because standardized testing has become so prevalent,[2] the inspectors believe they can inspect performance. The availability of outcome data has made it possible, at least in the eyes of state department officials, to discriminate among districts legitimately. They might share with many researchers and

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[2] The Council of Chief State School Officers (1988) estimates that over 40 new state testing programs were initiated in the 1980s.

educators a skepticism about the quality of most standardized tests, particularly relating to test emphasis on basic skills, and the sentiment that tests capture only a narrow range of schooling outcomes. In other words, they might agree that there is still a long way to go to achieve the appropriate fit between the ultimate goals of regulation and available measures. However, agency personnel express a willingness to rely on tests and other measurable items such as dropout rates and attendance rates. They view these items as sufficient evidence of performance to justify differential treatment to the public and elected officials. Such statistics are seen as far superior to compliance/non-compliance ratings or subjective judgments as a basis for discriminating among districts.

The ability to certify districts as high or low performing and to vary the degree of regulatory flexibility accordingly appears to provide a solution to regulatory unreasonableness. It permits the exemption of high performance districts from restrictive regulations aimed primarily at the bad apples at the lower end of the distribution, freeing up creative energy for innovation and experimentation. It also potentially avoids the paperwork excesses and legalism associated with compliance monitoring. However, there are serious unresolved questions about how differential treatment is conceived and how it may be used to improve schooling.

THE EFFECTIVENESS OF DIFFERENTIAL TREATMENT: PROBLEMS AND ISSUES

Performance-based differential treatment is very attractive to policy leaders seeking to move beyond standards to spur school improvement and to state agency officials under pressure to use scarce resources more effectively. Therefore, it is finding its way into practice vary rapidly. But issues regarding the purposes and potential benefits of differential treatment generally have not been well thought through. These issues include: the selection of indicators for purposes of discriminating among districts; the links between emerging forms of differential treatment and school improvement; the capacity of the state to apply differential treatment strategies; the willingness of districts and schools to participate in differential treatment plans; and unanticipated interactions among differential treatment strategies. In addition, standardizing influences still abound and the problem of reconciling standardization with necessary local discretion remains, even in the context of differential treatment.

Using performance measures as a basis for differential treatment ideally requires fully developed indicator systems where input, process and output variables are related to each other in ways that allow factors affecting performance to be explored. However, such systems do not exist as such. Most states report only outcome measures; a significant proportion of this data is from pupil testing. Our ability to assess complex factors such as students' higher-order thinking skills is quite limited, so most of these tests are primarily of the basic skills variety; only a few states, such as Connecticut and California, have made significant progress toward the testing of critical thinking skills. Narrow measures of student performance fail to capture the complexity of schooling and learning. They may also direct school personnel to concentrate on factors that are not related to local learning goals, and in fact, deflect attention from such goals (David 1987).

Furthermore, when states attach significant consequences to indicators, using them to justify differential treatment, the quality of the data can be highly suspect. For example, dropout rates can range drastically depending on the definition of the numerator and denominator (Williams 1987); measurement strategies can become highly reactive, depending on the stakes attached to the numbers. Given such problems, some analysts have labelled the use of available performance measures for accountability a "premature drive" (Kaagan & Coley, 1989).

Even if better measures were available, the trend toward rewarding high performance with greater regulatory flexibility and sanctioning low performance with more oversight is problematic for several reasons. A fundamental issue is the relationship between compliance--and less or more stringent insistence on compliance--and performance. The extent to which compliance and performance are related obviously depends on factors such as the educational soundness of the statutes and regulations to which compliance is required and the suitability of those rules to local needs. Neither can be taken for granted. Compliance-related activities, such as more oversight, may not result in educational improvement and

are clearly of dubious value in the case of compliant but low-performing districts. Furthermore, by offering to exempt high-performing districts from regulation in order to spur further improvement, state policymakers may be undermining the message they send to other districts about the benefits of compliance. Undertaking a strategy of selective regulatory enforcement would seem to require a clear explanation of why regulation is a barrier to excellence in some cases and not in others.

Developing an educational improvement rationale for the "waivers for the good; more oversight for the bad" strategy is difficult. First, reserving autonomy for high performers is not consonant with what is known about school improvement. Research on effective schooling indicates that discretion, in the form of school-site management and democratic decision-making, is integral to promoting the collegial goal agreement associated with enhanced performance (Cohen, 1983; Purkey & Smith, 1985). Similarly, research on change emphasizes the importance of local ownership and leadership (Fullan, 1982). School-level discretion is, according to research, best viewed as either a condition present in effective schools serving lower-achieving students and/or a necessary precursor to improvement in other schools, not a reward for already high-achieving schools.

Building on this research, the current school restructuring movement highlights the benefits of greater school-level discretion in improving teaching and learning for all students. (Carnegie Forum on Education and the Economy, 1986; NGA, 1986). Experiments in restructuring, both the state programs discussed briefly above, and district-level efforts in places like Dade County, Florida and Rochester, New York, start with school-level goal setting and shared decision-making as the ingredients necessary for substantive improvements in teaching and learning. And finally, when we search for examples of successful restructured schools, we are likely to find that regulatory flexibility was an important component in their evolution. In the case of one outstanding example of restructuring in an inner-city setting, the Central Park East Schools in New York City, the teachers and administrators adopted a posture of ignoring impeding regulations as they reshaped their schools. Conditions and performance had been so terrible that the district and central board did not attempt to interfere on the assumption that things could not get any worse. Today, the Central Park East Schools have markedly improved on standard measures of performance and have waiting lists of students wanting to attend (Elmore, 1990).

Hence, one conceptual difficulty in tying selective regulatory enforcement to performance lies in the assumption that only higher-performing districts would benefit from more regulatory freedom. A second is encountered in failing to distinguish adequately among the lower-end districts. Even if there are strong reasons to believe that in the context of any one state strict compliance will result in educational improvement, district variation in the factors affecting compliance must be taken into account. Failure to sort out the underlying causes of non-compliance can lead states to the wrong assumptions about the appropriateness of enforcement and other policy approaches. Differential treatment should mean matching policy instruments to district conditions in a way that is sensitive to the range of factors affecting district response and to the mix of "carrots" and "sticks" in the state's arsenal (Elmore, 1982; Berman, 1986; McDonnell & Elmore, 1987).

As we know from research on policy implementation, many factors affect the translation of state policies into local practice. These include differences in local political context, leadership and perception of the match between state and local goals (aspects generally summarized by the term "will") and differences in fiscal base, taxpayer support, special student needs and personnel resources (aspects generally summarized by the term "capacity") (McLaughlin, 1987). Districts with high levels of will and capacity are most likely to comply with state policy. As Berman (1986) points out, leaving alone those districts that rank high on both factors may be a useful strategy for states seeking to avoid excessive legalism and overregulation.

However, districts that are not in compliance vary on the will and capacity dimensions; lumping them together as eligible for more intensive oversight is not likely to be productive. Districts that are willing but unable to comply might benefit from capacity-building measures such as staff development programs and more fiscal and technical assistance. Since their heart is already in the right place, so to speak, more intensive insistence on compliance through greater oversight will not work. Such districts primarily need help. Districts that are capable but unwilling to comply may respond to more intensive oversight. Districts that are neither able nor willing probably need both oversight and assistance. As pointed out previously, from a performance rather than a compliance viewpoint, regulatory flexibility might be appropriate to particular districts falling into any of these categories. Alternative procedures that permit school personnel to meet the spirit if not the letter of the law might be better suited to the achievement of educational goals.

It is interesting to talk to state policymakers about the conceptual dilemmas posed by an approach that removes rules for districts who have flourished under them and applies rules more stringently to districts that have not. When asked why, if flexibility and discretion are important for improving schools, one should prescribe more monitoring and even takeover for failing schools, state policymakers offer two kinds of responses. First, they note, the extreme sanctions are reserved only for the most recalcitrant, those appropriately viewed as "bad apples." Northern policymakers are likely to cite corrupt, patronage-ridden districts and Southern policymakers cite all-black school districts that are starved for support by their white governing bodies whose members send their own children to private schools. Furthermore, some state policymakers assert that an intensive state presence does not necessarily mean a loss of flexibility. What it appears to mean to some is that the state and the district together work out targets and procedures for meeting state regulations and minimum standards; districts are then held accountable to the resulting negotiated agreement. That agreement may look different from district to district and mean some variation, at least temporarily, in the degree to which districts conform with state regulations.

But it is not clear how much diversity state policymakers are willing to tolerate with respect to failing districts or how long they are willing to wait for minimum standards to be met. It is also not clear whether the agreements negotiated between state monitors and districts can withstand changes of personnel or priorities at either level or whether districts will perceive intensive state presence in planning as a vehicle for flexibility in setting alternative approaches to meeting minimal standards.

A closely related issue concerns the state's ability to deliver the assistance that less capable districts may need. We have as yet no evidence that state intervention helps districts or schools improve educationally. Targeting resources to the neediest is a logical response to scarcity, but whether agency personnel can perform the necessary mix of assistance and compliance functions is an open question. State agencies have only fairly recently (over the last 20 years) moved away from an assistance to a compliance mode, as they encountered first, the need to assure observance of federal statutes and regulations and second, state policymaker emphasis on accountability. It might be argued that departments could fairly easily move back into an assistance role, an historically more familiar stance. However, the kind of assistance states are used to giving, such as multi-district workshops on curriculum, teaching or leadership, is not necessarily the kind that is now required. And, far from being abandoned, the compliance function will remain politically important and become more salient the more rewards and sanctions are attached to different levels of compliance and performance.

What state agencies are increasingly moving toward in the case of troubled districts is intensive, on-site assistance that is tailored to specific settings. The latter may require more and different resources than states currently have. Also, districts need to be able to see state teams as helpful, not a threatening. On-site state visits in the past have meant monitoring; it will be difficult for both states and districts to negotiate the shift to an assistance perspective. Given scarce resources, it is likely that state assistance and compliance teams will coincide, or at least overlap, and working out an appropriate stance will be even more challenging.

The dilemma is most readily apparent in the case of state intervention plans that involve intensive state assistance prior to takeover. Can state personnel divorce two competing goals of assistance prior to takeover: helping the district improve enough to avoid takeover and documenting the district's failure to improve sufficiently to justify takeover politically, or perhaps legally? Will local personnel develop the trust necessary for cooperative assistance efforts if revealing the extent of problems can provide evidence that might lead to the end of self-governance? Can members of state intervention teams work effectively with local personnel who know that if their efforts fail they might be replaced by intervention team members themselves or others they help select? And finally, as critics of the academic bankruptcy movement have asked, once takeover occurs, can externally appointed leaders develop the support among local staff and citizens they will need to effect educational change?

An additional threat to the future of differential treatment is the potential failure of flexibility, whether it is reserved for the already high-performing or made more widely available, to engender much district interest. As noted above, current waiver offers by state agencies appear to have few takers. Two aspects of this problem are described by state agency personnel. First, districts do not yet envision changes or new structures that are different enough from current practice to require exemptions from regulation. Second, very often impediments to change derive from deeply ingrained traditions rather than regulation. Traditions can be so strong that districts interpret state rules as being more encompassing

than they really are and school personnel believe they are constrained by non-existent regulations. As a Mississippi state official said:

> Everyone talks about freedom from the state. Nine times out of ten they refer to things they can do now, such as run an adult high school, run day care or after school care, etc. None of these hit up against a single reg.

The "lack of vision" and "imaginary regulation" problems may be temporary. One variable is the strength of the restructuring movement. Should it build momentum, it could provide concrete examples of alternative models of schooling and new roles for participants. It should also yield more evidence about the extent to which regulation poses real barriers and the ways in which waivers may ease the difficulties. However, the hesitancy surrounding change could also stem from local suspicion that state interest in flexibility is itself a passing phenomenon. Local educators may fear that states will eventually monitor and hold districts accountable for the very regulations currently being offered up for waivers. Furthermore, it is possible that some local actors do not feel constrained by regulation because in practice they are ignoring constraining rules and finding ways to camouflage this at monitoring time. Whatever the roots of local intransigence, state willingness to provide more flexibility does not appear sufficient, in and of itself, to spark local interest in waivers.

Another important issue concerns the interaction of various components of differential treatment. They might intersect in ways not currently foreseen. If districts receiving regulatory freedom are able to improve more than others, they would also capture the lion's share of monetary awards tied to performance. Winners would have the dual advantages of regulatory relief and money giving them a significant competitive advantage over other districts in successive competitions (Richards & Shujaa, 1990).

A final challenge facing the movement toward differential treatment is an old one. Standardizing pressures will continue, and the more variety that develops in a period of decentralization, the stronger pressures to re-centralize will become (Kaufman, 1971). The political imperatives of assuring minimal standards and of trying to compensate for the high mobility of students among districts will continue to drive state policy toward uniformity. Among the legacies of the reform movement are an increased proportion of dollars coming from the state and an increased familiarity with, and perhaps even comfort with, regulating core aspects of schooling on the part of state policymakers. New forces will also augment standardizing arguments. Recent reports from mathematicians and scientists urge a common set of challenging standards for math and science education (NCTM, 1989; AAAS, 1989). Other subject-matter experts are likely to follow. The implementation of such standards will mean coordinated state policy in curriculum, testing, teacher education and perhaps even teacher evaluation. The trick, of course, is to find ways of melding centralization with discretion; to make the rhetoric of the governors' horse-trade reality.

In summary, differential treatment tied to performance is fraught with issues that require attention. Tailoring monitoring and oversight activities to district needs appears to be a means of making regulation less unreasonable. In addition,

freeing many local actors from frequent, intrusive oversight may in itself promote greater focus on schooling and learning. However, many aspects of the relationship between varying compliance activities and school improvement are much less clear. Emerging forms of differential treatment use available, relatively narrow performance measures which may direct attention to less than optimal educational goals. The new forms are predicated on the benefits of regulatory freedom but in many cases make it available primarily to districts already doing well under current rules. They also assume a local interest in waivers that has not yet materialized. As for districts that perform less well, they could require a combination of compliance and assistance activities that may be difficult for state agencies to deliver. These problems suggest policy implications and a number of questions needing further exploration.

DIFFERENTIAL TREATMENT: A POLICY AND RESEARCH AGENDA

The preceding analysis indicates that differential treatment strategies can serve a variety of purposes. Techniques such as regulatory flexibility, targeted fiscal or technical assistance, and rewards and sanctions can serve varied goals. These goals can include more effective use of state resources, the alleviation of regulatory burden, the assurance of minimal standards and the encouragement of school improvement. A first implication is that differential treatment strategies should be tailored to the purposes they are intended to serve. Any one technique might address multiple goals, although it may take different forms depending on the primary purpose. It is most likely that the goals will be best met by combinations of strategies that are sensitive to the needs of various districts.

The manner in which a technique can take different forms in the service of different goals is apparent in the case of regulatory flexibility. Regulatory flexibility encompasses less frequent monitoring, waivers from specific regulation upon request, regulatory free zones that exempt some districts or schools from sets of regulation up front and state-level efforts to deregulate through code revision. All except the last could be applied differentially. If alleviating regulatory unreasonableness is the goal of regulatory relief, then compliance status might drive the application of differential strategies. Compliant districts would no doubt appreciate exemption from regulation, and/or frequent oversight of regulation, aimed not at them but primarily at the laggard districts who need to be brought up to minimal standards. In this case, relief would be a reward for a record of compliance.

However, if school improvement is the goal then policymakers need to define the circumstances under which regulation is a barrier to innovation. Regulation viewed as generally oppressive to creativity at the school level might be better removed from the books entirely rather than differentially waived. Differential relief to spur experimentation might benefit a different group of districts than differential relief to alleviate regulatory burden. For example, one could envision some willing but low capacity non-compliant districts better meeting improvement goals through alternate procedures that do not conform precisely to rule. And, as research on school improvement suggests, regulatory relief is potentially of benefit to more than just the already high-performing districts. Exemption could be based on application and review, as in the new state-supported restructuring plans, rather than performance rankings. Furthermore, given the lack of interest in specific waivers, states might experiment with regulatory free zones on the assumption that it may be the cumulative effects of several regulations that dampen innovation rather than isolated rules. In these latter examples, regulatory relief is more an incentive than a reward.

The manner in which a goal may require multiple strategies can also be readily illustrated in the case of school improvement. Regulatory relief may inspire innovation, but as we have seen, eligible districts may not see its benefits in the absence of assistance strategies that present alternate visions of schooling, disseminate models among schools, clarify the boundaries of regulation and

distinguish actual legal requirements from interpretations, etc. Other districts may need more intensive assistance strategies to improve schooling. Furthermore, state policymakers will continue to express statewide goals as standards, and the possibility of exempting some districts from those standards should not exempt policymakers themselves from thinking creatively about how to use standards to spur improvement rather than to specify minimums.

Second, in support of purposive, feasible differential treatment strategies, continued work on the development of better indicators of school performance is needed. If the prevalence of performance measures gives differential treatment in the service of school improvement a new legitimacy, then the irony of using measures that drive instruction to narrowly defined basic skills as a basis for differential treatment cannot be escaped. Encouragingly, there are numerous efforts in the policy and research communities to develop better, more sophisticated student and teacher assessments and better measures of instructional content and quality (Kaagan & Coley, 1989).

Third, it is clear that attention must be given to the state's own capacity to deliver differential treatment strategies. For example, effective targeting of state agency resources to the neediest districts requires that those resources are sufficient and embody the mix of compliance and assistance appropriate to the needs of those districts. The number and expertise of state agency personnel are two important issues; also of significance are how staff are organized and guided to determine and deliver the appropriate mix of services.

Perhaps the major implication of the increased use of differential strategies is the need for research on emerging forms of differential treatment in practice. Studies should address the support for differential treatment strategies at the state and local level; the personnel requirements and other costs such strategies embody; and the effects of such strategies on schools, districts and states and the relationships among them. Examples of differential approaches worthy of study are state restructuring programs that incorporate waivers; district restructuring efforts that have sought waivers from states; differential oversight based on levels of performance/compliance, including the extreme sanction of state takeover; and monetary reward systems.

A number of state and district restructuring experiments have been in place for at least a year and initial effects on practice could be examined. Only through empirical examination over a period of time can we discover whether districts and schools eligible for substantive waivers take advantage of them, whether regulatory barriers become more evident after experimentation has been underway for a while, what kinds of barriers are identified and how removal of barriers facilitates innovation.

State intervention/takeover plans could be studied in states such as New Jersey, Kentucky and South Carolina. Empirical studies will reveal the consequences of state intervention in troubled districts, the effectiveness of various intervention strategies in addressing problems ranging from mismanagement to poor performance, and the utility of intervention as a deterrent to other districts.

Examination of various approaches to differential treatment will shed light on their suitability for various purposes and suggest how different design and implementation factors affect the achievement of these purposes. Such a knowledge base will make it possible to assess the promise and viability of differential treatment as a strategy for acknowledging diversity in the midst of standardization.

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DIVERSITY AMIDST STANDARDIZATION:
STATE DIFFERENTIAL TREATMENT OF DISTRICTS

Errata

The following references were inadvertently deleted from page 28 during printing:

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APPENDIX
INTERVIEW STATES AND INTERVIEW PROTOCOL

Interview States

Telephone interviews were conducted with personnel in the following states:

Alabama	Kansas	Montana	Tennessee
California	Kentucky	Nebraska	Texas
Colorado	Maine	New Mexico	Washington
Connecticut	Maryland	New Hampshire	Wyoming
Delaware	Minnesota	New York	
Florida	Mississippi	Ohio	
Illinois	Missouri	South Dakota	

Interview Protocol

I am calling from the Center for Policy Research in Education at Rutgers University. We are doing a project on state agency ability to accord differential treatment to school districts through waivers and different approaches in funding, technical assistance and monitoring. It was suggested that you would be an appropriate person to discuss this with. If that is not correct, who would be? Can we talk now for about 20 minutes? If not, could we make another appointment?

I. First, I would like to talk to you a few minutes about waivers from regulation.

A. Does the department or board have statutory authority to grant districts waivers from regulation?

Is this a blanket authority or authority mentioned in specific statutes? If the latter, is there a pattern in the legislature specifying more or less such authority?

If the authority is granted by substantive area, probe for those areas (e.g. teacher certification, class size, health and safety--such as the use of undersized classrooms, curriculum and testing, length of school day or year or any other instructional time requirements or any other area)

Do you have any material summarizing the waiver authority? or copies of specific statutes that grant waiver authority? Please send if you can.

B. What is the process for granting waivers?

PROBES: to whom does the district apply?
Who makes the decision to grant or not grant?
Is it decentralized--going through various department offices or bureaus, or centralized through you or some other senior official?
What is the role of the State Board in granting waivers?

Interview Protocol (continued)

C. What is the philosophy about granting waivers?

What are the purposes of waivers? (e.g., to allow a slightly longer period of time to come into compliance; to permit districts flexibility in operation if they can demonstrate they are meeting the spirit of the regulation; to encourage districts to engage in innovation, restructuring, etc.)

Does the period of time for which a waiver may be granted vary in accord with these purposes, for any other reason?

Does the Board or senior agency staff determine to be "loose" or "strict" and is such a determination made across substantive areas---or within the areas (such as teacher certification, or class size)

What are the criteria used in deciding whether or not to grant a waiver?

Have there been any changes in the purposes for which waivers are granted, in the posture (loose or strict), or in the criteria used to make a decision over the past several years? If so, why?

D. What has been the experience with waivers?

1. What are the patterns in waiver requests, by:

Purpose
Substantive area
Volume (how many a year; out of a total of how many districts)
Type of districts making requests

How do these interact (e.g. more volume in one substantive area than another; more requests from certain types of districts in certain areas)

2. Are there any changes in these patterns? Why?

3. What is the pattern in waiver granting? REFER TO CATEGORIES ABOVE Any changes? Why?

4. Is there any change in your monitoring stance toward districts that have waivers?

5. How do districts respond when a waiver is denied?

4. Do you have any materials that summarize the requests made and granted? Please send

Interview Protocol (continued)

II. Now I would like to spend a few minutes talking more generally about differential treatment of districts.

1. Are you targeting your efforts more toward certain kinds of districts--

o in funding, especially for specific program grants

o in providing technical assistance to districts

o in monitoring or compliance activities

GET SPECIFIC EXAMPLES OF ANY OF THE ABOVE

If yes to any of the above,

2. What kinds of districts are receiving any of the above types of special attention?

o the most needy (how are they identified)?

o those who ask for help the most?

3. Why is the targeting of attention occurring?
REFER TO REASONS IN PARAGRAPH ABOVE, PROBE FOR OTHERS

4. What effects on the operations of the department does such targeting have?

III. One last question concerns the resources available to the Department?

o Does the department have new responsibilities as a result of education reform? PROBE FOR EXAMPLES

o Has the department's budget or staffing pattern changed over the last several years?

o What is the match between the resources available to the department and the responsibilities it now has?